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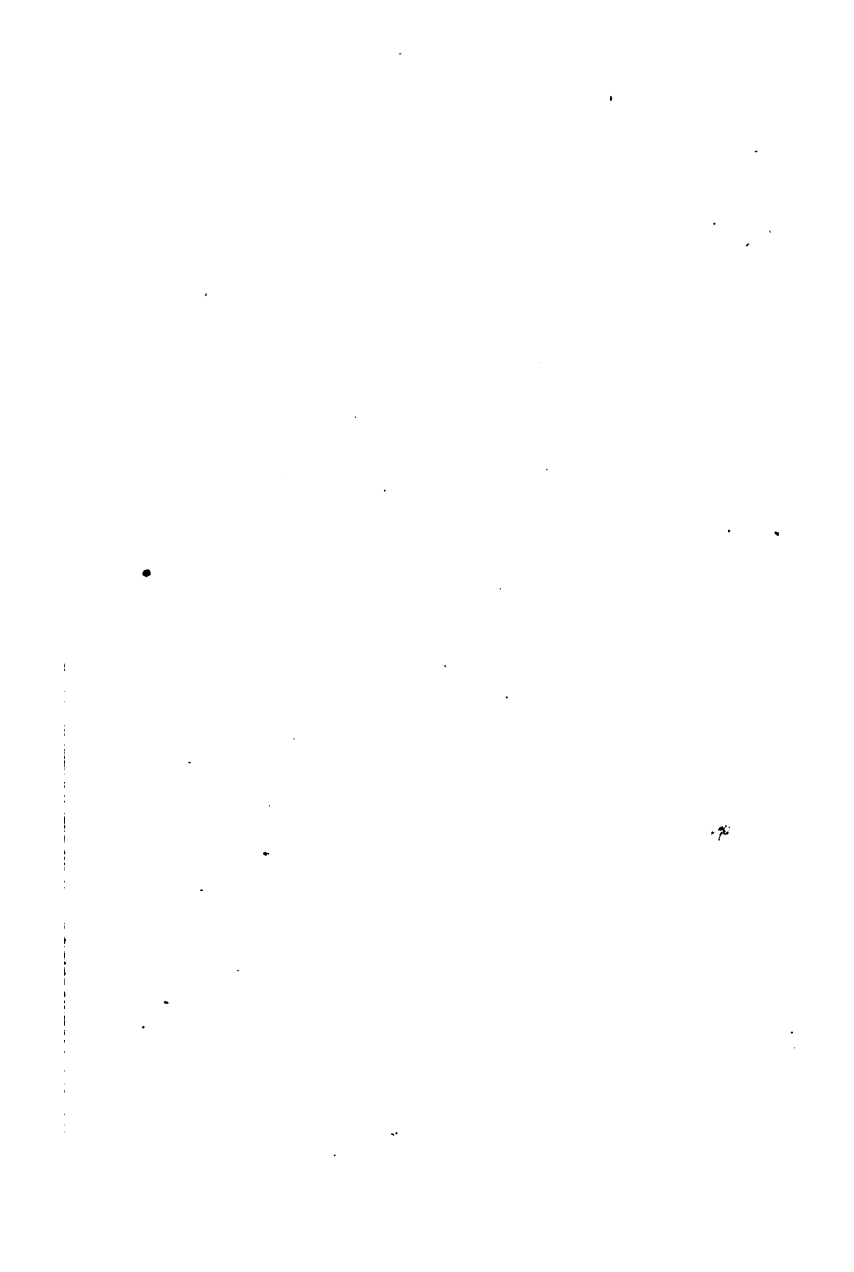
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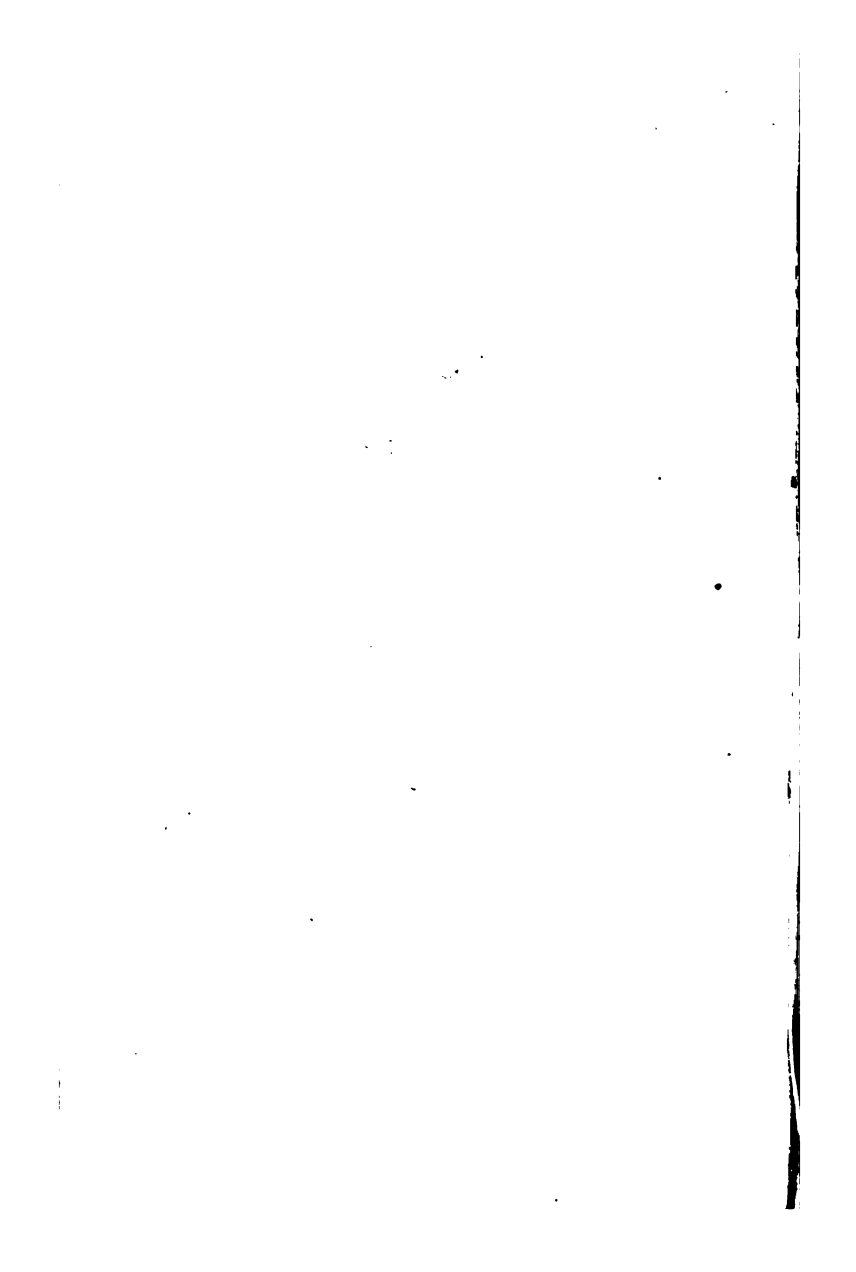
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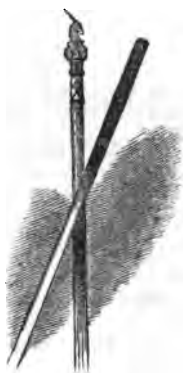
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THE
CHURCHWARDEN'S
GUIDE.



SECOND EDITION.

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INTRODUCTION.

IN addressing Churchwardens on the subject of their Duties, the writer labours under the disadvantage of being unable to give instructions proper for their guidance with the simplicity and certainty which are desirable.

This is owing to the mixed character of the office. The Churchwarden is a lay officer, and, as such, accountable to the Common Law Courts; but his office is mainly conversant with Ecclesiastical things, and this brings him within the jurisdiction of the Ecclesiastical Courts.

Common Law and Ecclesiastical Law are founded on different principles, and proceed on different Rules of practice. Hence their decisions often require nicely to be distinguished in order to render them consistent, and sometimes they conflict. In particular, the modern Ecclesiastical judgments contain many doubts and questionings of the ancient cases and text-writers of the Common Law; and as these doubts and questionings are moved and opened on principles derived from the Canon Law, or other sources very recondite and sometimes inaccessible, it is difficult to say

what propositions are sound Law, except those which have recently gone under the review of both the Common Law and the Ecclesiastical tribunals.

In the following pages as much of such perplexed matter as is possible has, together with the authorities, been thrown into the form of Notes. But no expedient at the command of a compiler can clear the subject of obscurity and uncertainty.

ON having Notice of your being elected Churchwarden, you should ascertain whether you have been duly elected; for should your election be subsequently declared void and set aside, you might be made personally liable for acts done by you while acting, as you supposed, in the character of Churchwarden.

With regard, therefore, to what constitutes a good election, know that the party elected Churchwarden must be a resident householder in the Parish; and that every such parishioner is liable to be elected Churchwarden, except a few professional and official persons, who are *exempt*, and a few who are *disqualified*. Poverty is no disqualification, as the parishioners may trust whom they like. The election must take place early in Easter

Exempt.—Persons legally exempt are: Peers, Members of Parliament, Clergymen, Roman Catholic Ministers, licensed Dissenting Preachers, Counsellors, Physicians, Surgeons, Apothecaries, Excise and Custom House Officers, Militia Men, registered Seamen.

Disqualified.—The disqualified Persons are: Aliens, Infants under ten years of age, Jews, Papists, Felons.

week. It should be according to the custom of the Parish. The most common custom is, that the Churchwardens should be elected by the joint consent of the minister and parishioners; or, if they cannot agree, the one to be chosen by the minister, the other by the parishioners. A curate may nominate a Churchwarden in the absence of the minister. The election by the parishioners is made in Vestry duly assembled, by their votes. The Vestry may annul the election by excusing the party elected before he is admitted to make the declaration in lieu of an oath.

If entitled to be exempt from the office, you must apply to the Court of Queen's Bench for a Writ of Privilege to the Ecclesiastical authority, called the Ordinary (*i.e.* the Bishop of the diocese, or the Archdeacon, official or surrogate), not to administer the declaration of office.

Protestant Dissenters and Quakers have no exemption from the office; but may do the duties by *Deputy*, approved of by the parishioners, and duly declared in.

But if you are satisfied that you have been duly elected, and are not exempt, your next care must be to attend before the Ordinary to be admitted to make and subscribe the *Declaration* in lieu of an oath. This is usually done at the Visitation; but the Ordinary is *bound to admit you* on the first application. If the Ordinary refuse you, the

Deputy.—Stat. 1 W. & M. c. 18, ss. 7, 11.

Bound to admit you.—The Ordinary's function is ministerial; Bac. Abr. Churchwardens, A.; and, in general, he cannot control or examine into the election; *Morgan v. Cardigan*, 1 Salk. 166; but may object against a disqualified

Court of Queen's Bench will grant a mandamus to compel him to admit you.

The Declaration in lieu of an oath is general, faithfully and diligently to perform the Duties of your office, and none other can be required.

No fee can be demanded for the admission, except it be by custom.

When duly elected and admitted, you will continue in office until Easter week next after such election, but you are *reputed to continue* until the new Churchwardens are elected and capable of acting as such. For misbehaviour in the office, the parishioners may discharge you at any time; and in case of vacancy by such dismissal, or by your leaving the Parish, or death, they may choose another Churchwarden.

You should not begin to execute the office before you are *declared in*.

One Churchwarden only may by custom be appointed; but there are usually two.

Whether chosen by the Parish or Minister, the Duties of the officer are the same.

Churchwardens are *lay officers*. They are a corporation to hold and purchase goods for the Parish, and may bring indictment or action of trespass

person that his election was void, as officers the most ministerial leave a discretion not to join in an illegal act. 1 Hag. Consist. Rep. 10; R. v. Middlesex Archdeacon, 3 Ad. & E. 617.

Reputed to continue.]—Canon 118; and so R. v. Marsh, 6 Nev. & Man. 668.

Declared in.]—The older authorities say the Churchwarden may act before he is sworn; Anon. 1 Vent. 267; but the late Act requires him to make and subscribe the Declaration before beginning to discharge the duties of the office.

Lay Officers.]—1 Vent. 267.

against those who steal or take them. But one Churchwarden has no authority to pledge the credit of his co-Churchwarden for expenses or money borrowed in that capacity; and one of them incurring expenses without the knowledge of his colleague, is liable solely and individually; and one of them cannot release the action of both.

Upon being fully established in your office by admission of the Ordinary, you will take upon yourself its Duties, and the Trusts, and Powers, with which you are invested, in order to the performance of those Duties.

Those **Duties** are of an administrative character, and are divisible into two Classes:—
I. Ecclesiastical. II. Temporal.

The First Class relates to the CHURCH:—

1. THE CARE OF THE CHURCH GOODS.
2. THE REPARATION AND SUSTENTATION OF THE CHURCH AND CHURCHYARD.
3. THE DECENT ORDERING OF MATTERS IN THE CHURCH AND CHURCHYARD CONNECTED WITH DIVINE SERVICE, AND OTHER RITES AND CEREMONIES.
4. THE SEATING OF THE PARISHIONERS IN THE CHURCH.
5. THE ORDERING OF THE BURIAL-PLACE OF THE PARISHIONERS.
6. THE PRESENTMENT AND PUNISHMENT OF DISORDERLINESS.

The Second Class more concerns TEMPORAL AFFAIRS:

1. THE ACTING AS OVERSEER OF THE POOR;

2. THE SUMMONING AND CONDUCT OF VESTRIES;
3. THE ACTING AS SEQUESTATOR OF THE LIVING;
4. THE PERAMBULATING OF THE PARISH;
5. Some other miscellaneous matters.

The **Trust** and Powers with which you are invested for the performance of those Duties, consist of CERTAIN RIGHTS and AUTHORITY in and over the Church and Churchyard, and the Church goods and chattels; and principally the TRUST and POWERS as TO RECEIVING, LEVYING, and EXPENDING CHURCH RATES, subject to ACCOUNT.

The due discharge of the Duties and Trusts of the office is enforced by certain **Sanctions**; and in its honest discharge you are protected and encouraged by certain **Privileges**.

All these matters will be spoken of in the above order.

With regard to the Ecclesiastical Class of Duties; and first, as to the CHURCH GOODS.

One of your earliest cares will be to ascertain whether the goods connected with the Church as a place for divine service, which come into your possession, are provided convenient and decent.

The Church should be furnished with the following articles:

- A communion table;
- A cover to it, of silk or other decent stuff;
- A fine linen cloth to be spread on it at the Ministration of the Lord's Supper;
- A chalice with a cover, or Communion cup;
- A paten;
- A Communion flagon;
- A basin to receive the alms, — and all these last four to be of pewter or of purer metal;

- A baptismal font of stone ;
- A reading desk and pulpit ;
- A decent surplice with sleeves for the minister ;
- A large Bible of the last translation ;
- A Book of Common Prayer ;
- The Books of Homilies allowed by authority ;
- A table of the Ten Commandments set up in some conspicuous place ;
- A table of degrees of marriages prohibited ;
- An alms chest put up in some conspicuous place, having three keys, of which one to be kept by the Minister, and one by each of the Churchwardens ;
- Should you find all these things, and more, already provided by your predecessors, you must keep them safe, and render them in the same state to your successors. Should you find any of them defective, you must have them properly amended and repaired ; should any of them be wanting, you must at once procure them.

Besides these articles, certain Books are to be provided and kept for the Parish, namely,—

- A register book for christenings and burials ;
 - A register book for marriages ;
 - A proper book for entering the minutes and resolutions of the Vestry ;
 - A proper book for the accounts of the Churchwardens ;
 - Terriers of the glebe lands and accounts of the church property ;
 - And a chest with locks and keys to keep the Parish books in.
- Register.*]—With regard to register books, you are from time to time, when required by the officiating minister, to furnish register books adapted to the forms given by the Act, at the expense of the Parish ;

and a dry well-painted iron chest for keeping such books, either at the minister's house, or in the church. He is, or you, by his direction, are, to make four copies of the entries on the register book annually, at the expiration of two months after the end of each year; and you attest the verification of the same by the minister. You are to transmit annual copies of the register to the Registrar of the Diocese, by the post, on or before the first of June in every year.

In case of default in the Minister to verify copies of the register books, you are to certify his default to the Registrar of the Diocese.

The Registrar-General furnishes *marriage register books* to the Minister, and is repaid by the Churchwardens and Overseers.

The REPARATION and SUSTENTATION of the Church and Churchyard is a parochial burden; and it is your duty to take judicious measures for its adequate discharge.

On entering office you should ascertain whether the fabric of the church is in good repair; and for this purpose you should obtain the assistance of a surveyor, or a competent person, and ascertain if any repairs be necessary, and to what extent—necessary repairs are those required for the walls, windows, roof, floor, tower, galleries, and all those things which are attached to the freehold of the church. You should also examine the churchyard, and see that the *fences* are in

Marriage Register.—6 & 7 W. iv. c. 86, s. 30.

Fences.—The parishioners are in general bound to repair the fence of the churchyard at their own charge.—But by prescription the parson or vicar, or any owner of land, may be liable to such repairs, and in case of their neglecting, whereby injury is done to the tombstones, it would seem that an indictment lies against the party liable, it being to the nuisance of the inhabitants of the parish. *R. v. Reynell, 6 East, 315.*

good order, the gates and stiles in a proper state, and the paths of sufficient width for the decent carrying of a corpse to burial, and the churchyard generally free from nuisances of all kinds, and that it is in a decent and fit state for the burial of parishioners.

When you have obtained an estimate of what it would cost to repair the church, set in order the churchyard, and supply defects in the utensils of the church necessary for the proper performance of divine service, you should summon a Vestry for the purpose of submitting to them such estimate, with a view to the obtaining their sanction to the expense, and a rate for defraying it: and as soon as you have obtained their sanction, and the rate, you should proceed to repair, etc. But if you should desire any alteration by way of improvement of the church, or the removal of any nuisance, even if you have the consent of the Vestry, you should obtain a faculty from the Ordinary, before you proceed. The mode of summoning the Vestry will be shewn hereafter, and also the form and particulars of the rate.

In regard to the ORDERING of matters in the Church, connected with DIVINE SERVICE, and Ceremonies, your Duties are confined to a few particulars.

Sacramental Elements.]—You will provide at the expense of the parishioners fine white bread, and wholesome wine, in such quantity as the Parson shall direct.

Offertory.]—You will collect the alms of the congregation at the offertory, which alms are at the disposal of the Minister and Churchwardens, and if they disagree, then of the Ordinary.

Surplice.]—You will provide a surplice, as before mentioned, under “CHURCH GOODS.”

Hours of Service.]—The Canons direct that Divine Service shall be performed at convenient and usual times.

It is considered that the minister has a discretionary power of fixing these times, subject to the control of the Ordinary, whose peculiar province it is, in case of application to him, to regulate matters of this kind.

If the times appointed are in your judgment unsuitable and inconvenient, you should summon a Vestry-meeting; and if the majority of the parishioners thereat so direct, you should represent the case to the Ordinary. In the exercise of his discretion, as well as of that of the Minister, the custom of the Parish and the convenience of the parishioners ought to have great weight.

Organ.—An Organ may be erected, an organist appointed, and a competent salary allowed to him by the Vestry, but the consent of the Ordinary must be obtained to the erection of the organ. The question of salary and the continuance of the office of organist rests in the discretion of the Vestry; but the minister has the direction of the playing and singing in the church.

Bells.—You ought to keep the keys of the *Belfry*, and to take care that the bells be not rung without good cause, to be allowed by the minister and yourselves.

In regard to the SEATING of the Parishioners in the Church: the proper disposal of the pews or seats among the parishioners is one of your principal Duties.

You should see that as far as can be, the parishioners are accommodated within the church; and should any

Organ.—12 Mod. R. 416.

Belfry.—Canon 88. The Churchwardens may sell the bells, or silence them. *Martin v. Nutkin*, 2 P. Wms. 266. A special property or possession of the bell-ropes is in the Churchwardens; *Jackson v. Adams*, 2 Bing. N. C. 402; and so of other church goods.

one be discontented with your arrangements, he may appeal to the Bishop or other Ordinary.

No one is entitled of his own right to sit in any Pew (unless it be a *pew* attached by prescription or faculty to the house in which he lives) without your leave, subject to the approval of the Ordinary.

The Rector who repairs the chancel usually disposes of the sittings in it, and he is clearly entitled to the chief seat or pew therein.

You should also see that at the commencement of Divine Service, during its celebration and at its close, proper arrangements are made to accommodate persons resorting to the church to worship God, in entering therein, staying thereat, and departing therefrom.

The materials of pews and seats belonging to the parish are in your custody and care, for the purposes of the Parish; and it is your duty to see that they are in good repair and convenient, and to suffer no pew to

Pew.—Persons having pews appurtenant to their messuages cannot let them to non-resident persons, and thus by contract defeat the general right of the parish. *Walter v. Gunner*, 1 Hag. Consist. R. 317, 319.

If any person of his own head presume to build any seat in the church without license of the Ordinary, or consent of the Minister and Churchwardens, or in any inconvenient place, or too high, it may be pulled down by order of the Bishop or his Archdeacon, or by the Churchwardens, with consent of the Parson. But the Churchwardens should not remove it by their own authority. *Jones v. Ellis*, 2 Young & J. 265.

Persons unlawfully intruding into seats of the parish may be put out. *Reynolds v. Morton*, 2 Mood. & Rob. 384; and see *Burton v. Henson*, 10 Mee. & Wel. 105.

Non-parishioners may have a right by prescription to a seat in the body or aisle of a church, as appurtenant to a house out of the parish.

The materials of seats erected in the church with authority belong to the party, but if erected without lawful authority they belong to the Rector.

be built in such a manner as to obstruct the seeing or hearing of those sitting behind, or to prevent you, the Churchwardens, from observing whether the people behave as they should.

You should, in the distribution of the seats, carry out the orders of the Vestry; but the Incumbent has no authority in regard to the seating and arranging of the parishioners beyond that of an individual member of the Vestry, and which his station and influence naturally give him.

Rate-payers, who live out of the parish, may also come to the church if they please, and require proper accommodation.

The Vestry may, if they think proper, appoint a beadle to seat the worshippers, and preserve order in the church.

Another most important duty is the decent ORDERING of the BURIAL-PLACE of the Parishioners.

The Rules of Law in respect to Burial Rights are not so clear and explicit as it is desirable that they should be. But the following seem to be undoubted:

Every man is of right to be buried in the churchyard of the parish wherein he dies.

For the ground, or the performance of the funeral office, no *Fee* or payment is due, unless by special custom; and the burial must take place whether the fee be paid or not.

Pews already erected cannot be pulled down without the consent of the Minister and Churchwardens, unless after cause shewn by a faculty or license from the Ordinary. By Sir J. Nicholl, in *Jarratt v. Steele*, 3 Phill. Rep. 170.

Fee.]—By the common law, no burial fee is due of common right, but only by the help of a custom. No mention whatever is made of burial fees in the statutes Artic. Cleri and Circum-

The burial service is not to be used for such as die excommunicate, unbaptized, or who have laid violent hands on themselves; but if the deceased have been *baptized*, by sprinkling the water in the name of the Father, the Son, and the Holy Ghost, it is immaterial whether by clergyman or layman.

specte agatis. Where any fee is due, it must be by the custom of the particular parish or place; which custom, like all other customs, if controverted, is triable and determinable only in the Temporal Courts. *Sacramenta debent esse libera*, and the fee is for a duty performed. 1 Salk. 332, 334; 12 Mod. 171; Willes, Rep. 536.

The only canon now admitted and received by our laws relating to this question, is the sixty-eighth of the Canons of 1603; "No minister shall refuse or delay to bury any corpse that is brought to the church or churchyard, on convenient warning given him thereof."

The fee, if the custom to pay it be not denied, is recoverable in the Ecclesiastical Courts, 12 Mod. Rep. 326, 416.

In *Andrews v. Cawthorne*, H. T. 18, G. ii. Willes Rep. 536, the Court in giving judgment said: "The burial of the dead is the clear duty of every parochial priest and minister; and if he neglect or refuse to perform the office, he may by the express words of the canon 86, be suspended by the Ordinary for three months. And if any temporal inconvenience arise, as a nuisance from the neglect of interment of the corpse, he is punishable also by the Temporal Courts, by indictment or information. H. vii. G. i. B. R. That Court made a rule on Mr. Taylor, Rector of Daventry, in Northamptonshire, to shew cause why an information should not be filed, because he neglected to bury a poor parishioner, who died in that parish. It is worth observation that no ancient or modern constitution, or canon, fixed, or pretended to fix, any fee either for sepulchre or the burial office; and Lyndwood (*ubi supra*) calls it simony. The truth is, the Canons could not fix any fee; for Lord Holt, in Salk. 332, truly says, that "the Canons cannot take any money out of laymen's pockets."

Baptized.]—*Kemp v. Hicks*, 3 Phill. 264; *Mastyn v. Escott*, 2 Curt. 692. By stat. 4 G. iv. c. 52, s. 2, a *felo de se* may be buried in the churchyard, but not with the rites.

Where it has been usual and customary for you to receive for the use of the *parish*, *fees* for the *burial* in the church, or for the erection of tombs or monuments in the church or churchyard, there seems to be nothing wrong in maintaining the practice. But otherwise your duty will be to take care that the rights of the present and future inhabitants, and their burial-place, are not, during your term of office, invaded.

If from want of space, or other circumstances, the churchyard is not adequate for the burial of the parishioners, it is probable that you may use the soil in the interior of the *church*. But in other respects, unless by special custom, it does not appear that your parishioners have

Parish Burial Fee.]—Anon., 1 Vent. 274; *Andrews v. Simons*, 3 Keb. 504; because the Parish is to be at the charge to make up the church floor. It is so in London.

A custom for the Churchwardens to set up monuments in a church, without the consent of the Rector or Ordinary, is illegal. *Beckwith v. Harding*, 1 B. & Ald. 508.

"Ancient custom often annexes fees for erecting a stone or anything else, by which the grave may be protected, and the memory of the person interred preserved. It is no general common-law right, but custom will interpose, and where it is shewn to be customary, such practice will be supported. As to buildings of height, the authority is reserved to the Ordinary, and permission ought not to be granted without his authority in some manner interposed." By Sir W. Scott: *Boudin v. Calcott*, 1 Hag. Consist. R. 14.

Burial in Church.]—"The church is free to all the inhabitants for burying in." 12 Co. Rep. 105.

"By the custom of England every one (who shall have Christian burial) may have burial in the common part of the church or chancel, paying the usual fee to the parson for breaking up the soil. The usual fee is 3*s.* 4*d.* in the church, and 6*s.* 8*d.* in the chancel, or by custom it may be more. 1 Sal. 334; 2 Keb. 778; 3 Keb. 523. So by custom the fee shall be paid to the Churchwardens, though of common right it belongs to the Parson." Com. Dig. Cemetery, B. A vault may be prescribed to belong to a messuage; *Waring v. Griffiths*, 1 Bur. 440; or may be claimed by a faculty.

any rights in regard to burial in the church; nor you any duties except to take care that by that practice the fabric, with the burden of repairing which you are charged, is not injured, without at least your calling the attention of the parishioners thereto, and if they think right, applying to the Ordinary.

According to the law, as now declared in the Ecclesiastical Courts, a license or faculty from the Ordinary is requisite to legalize the making of vaults for burial, or the erection of *tombs* or monuments in church or

It seems clear that the Rector, whether lay or spiritual, may give a license for the burying of a particular corpse in the church, 2 Cro. R. 367; but the impropiator would be canonically punishable were he to attempt forcibly to break open the church with intent to make vaults, or to erect pews. Jarratt v. Steel, 3 Phill. Rep. 167.

In *Bryan v. Whistler*, 8 B. & C. 288, which was an action on the case by a person who had bought a vault in the church, against the spiritual Rector, who had sold it, but in violation of the agreement had re-opened it, and defaced the tablet put up to perpetuate the memory of the person buried, Bayley, J., on the argument of the point reserved as to the nature of the interest claimed by the plaintiff, considered it an easement which could be created only by deed; but even if it had been created by deed, he doubted very much whether it could be availably done. "The Rector had the freehold of the church for public purposes (not for his own emolument), to supply places of burial from time to time, as the necessities of the parish might require, and not to grant any vaults, which, as it seems to me, cannot be done unless a faculty has been obtained. Even by means of a faculty, a pew can only be granted to the inhabitants of a parish; and it is for the most part limited to a house, a removal from which destroys the right to the pew. Now, I cannot find any good reason why the same rules should not be applicable to a vault. In Com. Dig. Cemetery (B), it is said, 'A man may prescribe that he is tenant of a messuage, and ought to have separate burial in such a vault within the church.'" Mr. Justice Littledale also expressed an opinion that the Rector had no authority to grant the vault at all.

Tombs.—“Concerning the building or erecting of tombs,

churchyard. But when they are erected, with or without a faculty, they may be repaired by the parties, and cannot be removed or defaced at the pleasure of the Rector, Incumbent, or Churchwarden.

A man resident in a Parish, but dying out of it, has also a right to be buried there. But should the friends of any person, who is a *non-parishioner*, that is, one who did not reside or die in the parish, desire to bury him in it, it must be by permission.

sepulchres, or monuments for the deceased, in church, chapel, common chapel, or churchyard, in convenient manner, it is lawful * * * And the defacing of them is punishable by the Common Law. They that build or erect the same shall have the action during their lives, and after their deceases the heir of the deceased shall have the action. But the building or erecting of the sepulchre, tomb, or other monument, ought not to be to the hinderance of the celebration of Divine Service." 3 Inst. 202; 12 Co. Rep. 105. It is held by the Judges of the Ecclesiastical Courts, "that the permission of the Ordinary is necessary before any monument can properly be erected, but that it is frequently omitted under the confidence reposed in the Minister or Incumbent, whose consent (especially of the Rector, for monuments in the chancel) is taken on such occasions, and the Ecclesiastical Court is not eager to interpose." By Sir W. Scott, in *Maidman v. Malpas*, 1 Hag. Cons. R. 208. Coats of arms placed in any window or monument in the church or churchyard, cannot be beaten down or defaced by the Parson, Ordinary, Churchwardens, or any other. Cro. Jac. 367. If they be, the heir by descent has an action; so has the executor, for tombs. *Spooner v. Brewster*, 3 Bing. R. 136.

When private individuals hang up black cloth in a church, with the concurrence of the Rector, from respect to the memory of some person deceased, the Rector has no right to take any portion of the cloth, unless there was some agreement to that effect by the parties to whom the property belonged. *Cramp v. Bayley*, Coram, Bayley, J.; Kent Lent Assizes, 1819; cited *Degge's Parson's Counsellor*, 218, 7th edition.

Non-Parishioners.—As the churchyard is the common

Should a man's *dead body* be cast up by the sea upon your Parish, it is your duty at once to remove it to some convenient place, and as soon as can be bury it in the churchyard at the same expense to the parish as that of a parish pauper. Should any one find such a body, or more than one at the same time, and inform you of it within six hours of his finding it or them, you will pay him five shillings; should he fail to inform you within such time, you should have him taken before some magistrate, and fined five pounds for his neglect. Should you neglect, within twelve hours after notice given to you, to prepare for the burial of the body, you are liable to the same fine: in both cases to be levied by distress, subject to an appeal to the next Quarter Sessions which shall happen a month after the day on which you are so fined. For repayment of the money you lay out in this duty, you must obtain an order in writing from a Justice of the Peace for the county or place, on the County Treasurer.

burying-place of the parishioners, they are the persons interested in the exclusion of strangers, and the consent of their officers seems necessary for the burial of a non-parishioner.

Gibbs, C. J. "I do not apprehend that the Churchwardens would be liable to censure, either by the civil or ecclesiastical law, for joining with the Vicar in permitting strangers to be buried in the churchyard, and receiving fees for that permission, provided no inconvenience were sustained by the Parish." *Littlewood v. Williams*, 1 Marsh. Rep. 589.

If they think fit to grant permission, it seems that the Minister alone cannot prevent such a practice, nor can he demand an unreasonable sum for his consent to perform the service. But it would seem that the consent of the Rector, whether lay or spiritual, should be obtained; the trust which he holds the churchyard subject to, being for the burial of parishioners, or persons dying in the parish.

Dead Body cast on Shore.]—Stat. 48 G. iii. c. 75.

With regard to the punishment of **DISORDER-
LINESS**—

In some cases it is incumbent on you to see to the performance by others of their duties, and to proceed by Presentment at the Visitation, or other mode of punishment, against those who are guilty of Immorality in the Parish, or by their default or misconduct interfere with the right and powers of the parishioners to enjoy their property and privileges.

For the purpose of securing decent and proper behaviour in the church and churchyard, it is your duty at the Visitation next after the committing of any indecent act, to present to the Ordinary the person committing it. For your guidance you are thus directed by the Canons: "Let all things be done decently and according to order. No man shall cover his head in the church or chapel during Divine Service, except he have some infirmity, in which case let him wear a nightcap. None shall be during that time otherwise busied in the church than in quiet attendance, nor shall they disturb the service or sermon by walking or talking, or any other way, nor depart out of the church during the time of service or sermon, without some urgent or reasonable cause.

"You shall not suffer idle persons to abide either in the churchyard or church porch during the time of Divine Service or preaching, but shall cause them either to come in or to depart; and indeed you must secure good order at all times. You shall suffer no plays, feasts, banquets, drinkings, temporal courts—as leets, lay juries, musters, or other profane usage, in the church or churchyard. You shall see that all parishioners resort to Divine Service, and continue the whole time, and you must present those remiss. You

may take off the hat of any one who wears it in church at the time of Divine Service. If boys behave rudely you may chastise them, and may *turn* any body *out* of church who disturbs the congregation, but may not detain them in custody after they are out."

Canons, 18, 19, 83, 90.

If any person maliciously or contemptuously comes to the church, and disquiets or disturbs the same, or misuses the preacher or teacher, he may, on proof thereof before any *Justice* of the Peace by two witnesses, be bound by recognizance, or in default of sureties be imprisoned, there to remain until the Sessions, at which he may be convicted and fined Twenty Pounds.

It is also your duty to present the Minister, should you find that he neglects to repair his house, or to conduct himself decently and morally. The Rubric is appointed for his guide for the performance of his duties; and should he grossly fail to observe its directions, or depart from that mode of observing them which custom seems to have sanctioned, it would be your duty to present him; but this should be done most cautiously.

Although the freehold of the Church and Churchyard be in the Rector, whether lay or ecclesiastical, yet if he obstruct a church-path, or create any *nuisance*, or desecrate the graves by feeding swine in the churchyard or otherwise, you must present him.

Turn-out.—A person maliciously disturbing the congregation during the performance of the service, and not desisting when required, may be removed to prevent further disturbance, by a Churchwarden, or Constable, or any person. *Glever v. Hynde*, 1 Mod. R. 168. See also the head "Seating of Parishioners."

Justice.—Stat. 1 W. & M. c. 18, s. 18.

Nuisance.—"Indictment against a Vicar for non-repair of a churchyard fence, which it was alleged he had been imme-

Or if he refuse to let you into the church, when lawfully you may wish to go upon your business as Churchwarden, you must present him.

So if he cut down the trees in the churchyard to sell them for profit, and not to use them in repairing the church, or the parsonage, or commit any waste, you must present him; for these things, though legally vested in him, are under your care.

If the Rector neglect to repair the Chancel, it is your duty to present him for that also.

You should see that Curates are duly licensed by the Bishop, and that strangers, unless duly qualified, shall not preach in the church.

We now come to the Second Class of your Duties, namely, those of a TEMPORAL NATURE.

In virtue of your office of Churchwarden, you are an *Overseer* of the Poor; but no explanation will be here attempted of your Duties as relating to the Poor, except to state that they are the same as those of an Overseer by appointment.

The summoning and some other matters relating to VESTRY MEETINGS are considered to belong to your office. They seem shortly to be the summoning of the Meeting; attending thereat; and if

morally bound to repair, by means of which swine and other cattle broke in and rooted up the tombstones, and dirtied the porch of the church and the paths leading to it, to the nuisance of the inhabitants of the parish." *R. v. Reynell*, 6 East, 315. This precedent, if good law, would be an authority for considering the non-reparation of the chancel an indictable offence, as the non-reparation of the chancel is as much a nuisance to the inhabitants of the parish as the like default in regard to the churchyard fence.

Overseer.—See the "Overseer's Guide," C. Knight & Co.

there be no Vestry Clerk in the Parish, then, under the direction of the Chairman, making, or seeing to the making, reading, and signing of proper Entries of all the Orders or Resolutions of the Vestry, except such perhaps as relate to the Poor or Highways, or other functions for which there is a peculiar office.

The *Vestry* must be called after this manner, except in London or Southwark, or any other place where the vestries are regulated by *particular Acts* of Parliament:

Notice.]—First, you must give *notice* on some Sunday at least three days before the holding of the vestry, of the purpose for which it is to be holden. This you must state plainly, and the hour and place at which it is to be holden, and such *notice* must be a written or printed notice, *signed* by you, or the Parson or

Vestry.]—58 G. iii. c. 69; and 59 G. iii. c. 85.

Particular Acts.]—Many parishes are governed by particular Acts of Parliament. The Vestries must in such places be constituted according to such Acts. And by the 1 & 2 W. iv. c. 40, it was enacted: "That in all parishes, being parts of cities and towns, and in other parishes containing more than eight hundred persons rated as householders, should the majority of the rate-payers require it, there should be elected a vestry of resident householders in the proportion of twelve, where there are less than one thousand rate-payers; twenty-four where there are more than one thousand; thirty-six where there are more than two thousand; and in the same proportion of twelve vestrymen for every one thousand rate-payers, up to the number of one hundred and twenty, which number the vestry shall not at any time exceed."

Notice.]—Stat. 1 Vic. cap. 45.

Signed.]—The stat. 1 Vic. c. 45, prohibits any notice being affixed to the Church, unless previously signed by a Churchwarden, or by the Rector, Vicar, or Curate, or by an Overseer of the Poor. In the election of Churchwardens, it was said

Overseer; and copies in writing or in print, or partly in writing or partly in print, shall immediately before Divine Service be affixed on the principal door, and on or near the doors of all the churches or chapels within such parish or place. If there be no Divine Service, or no church or chapel, you must give the notice as such notices are usually given in the place, in the best way you can for making it known.

The persons who summon a Meeting, may, for elections at least, lay down some *order* for the proceedings.

At the meeting of the inhabitants in Vestry, the votes of those present bind those that are absent.

Chairman.—The Minister, whether Rector, Vicar, or Perpetual Curate, is Chairman. If he be absent, the Vestry must elect the Chairman by plurality of votes.

Vestry Book.—It is your duty, together with the Overseer's, to provide a book, in which the minutes of the proceedings and resolutions of the vestry are to be entered, but which book is to be kept by those to whom the vestry shall agree to entrust its custody.

Adjournment.—The Rector, Vicar, Curate, or other person presiding at the vestry, may adjourn the meeting for the purpose of polling; but may not adjourn the business of the meeting.

Poll.—The questions at the meeting are decided by shew of hands or Poll, which is grantable by the Chairman. When a Poll is demanded, the Rector or other Chairman must keep the poll open such time as may be reasonably required to give an opportunity to all to vote. Three hours is too short a time in a populous place.

the Rector is the fit person to give the notice, as he appoints one. At elections where there is no sworn presiding officer, the control of the election, subject to the Common Law Rules, is in the electors themselves. *R. v. Winchester*, 7 East, 573.

Order.—*R. v. Chester*, 1 Ad. & E. 342.

Adjournment.—*R. v. D'Oyley*, 12 Ad. & E. 139.

Voting Scale.]—In all places, except parishes in London and Southwark, if there is no special usage or custom as to the number of votes, the votes will be thus:

Every inhabitant or rate-payer rated on the last rate, on a rent or value under 50*l.*, will have one vote.

If amounting to 50*l.* and upwards, will have one vote for every 25*l.*, but not to exceed six votes altogether.

Where two persons are jointly rated, one only shall vote, and Clerks or Agents may vote for Corporations. Inhabitants coming in since the last rate was made, and rateable, may vote.

All rate-payers who come to the poll may vote, though not present at the Vestry meeting.

Inhabitants refusing payment of Poor Rate cannot vote, or be present at the Vestry.

In regard to SEQUESTRATION; when you do anything in that matter, you act as Bailiff of the Bishop.

Should the Living become vacant by death, or suspension of the Parson for misconduct, it is your duty at once to apply to the Chancellor of the Diocese, for the proper authority to be made out to you to enable you to discharge the duty of sequestrator, which is to take charge of the profits of the Living, as if they were your own, and to do all such acts as most fitting to preserve and increase them—as to mow the grass, plough, etc.; to repair buildings and fences; to see that the church is served by procuring a Curate, to be licensed by the Bishop; and if possible to prevent disputes; to obtain a sanction as to the amount of money to be paid weekly to the Curate. In this duty you may act as the Rector, in cutting down

Voting.]—Stat. 58 G. iii. c. 69; stat. 59 G. iii. c. 85. R. v. St. Mary Lambeth, 8 Ad. & E. 356.

trees when necessary, but only for that purpose to repair the house and chancel. When the successor is appointed, or the suspension renewed, you must account to the Incumbent for the intermediate profits, or the Ecclesiastical Court will examine your accounts.

If the Ordinary think fit to appoint any other sequestrator, he may do so, and then you escape the duty. When the living is sequestered to pay the Incumbent's debts, you are rarely appointed sequestrator; but should you be so, the duties would be the same as in other cases.

If any person should trespass on, or otherwise injure, the property, you cannot sue the person in your own name, but had better communicate it to the Bishop.

With a view to ascertain what the Boundaries of the Parish are, it is your duty at the usual time to perambulate it, and in doing so, if a house or a field stand upon the bounds of the parish, and you cannot ascertain the bounds without entering the house, you are entitled to do so.

By the Mutiny Acts you are, when required by Government authorities, to affix on the Church door notifications of the meritorious conduct or the misconduct of soldiers or marines belonging to your parish, on the Sunday next after the receipt of the notification.

The other great branch of your office embraces the **Trust** over the Church, Church Goods, Church Rates, and some other monies which the Law has confided to you.

As to the Church itself, you are termed its *Guardians and Keepers*; but in the right of pos-

"Guardians and Keepers of the Church, and representatives of the body of the Parish."—1 Blac. Com. 395.

session, the Minister also participates. And the freehold of the Edifice and Churchyard is in the *Parson*, to the end that he may sue, and defend the right of the Church.

You have the following legal powers. You may prosecute by indictment any who feloniously take the bells, books, or other goods of the church, either in

"The Minister has in the first instance the right to the possession of the key, and the Churchwardens have only the custody of the Church under the Minister; and if he refuses access to the Church on fitting occasions, he will be set right on application and complaint to higher authorities."—Sir W. Scott; *Lee v. Matthews*, 3 Hagg Eccl. Rep. 173.

"All persons ought to understand that the sacred edifice of the Church is under the protection of the Ecclesiastical Laws as they are administered in these Courts; that the possession of the Church is in the Minister and the Churchwardens, and that no person has a right to enter it when it is not open for Divine Service, except with their permission and under their authority."—By Sir J. Nicholl; *Jarratt v. Steele*, 3 Phill. Rep. 169.

Mandamus to deliver up keys of Church to Sexton, refused. Lord Ellenborough, C. J.—"They had better get a new key."—Anon., 2 Chitt. Rep. 255.

Mandamus to Churchwardens to deliver Vestry Book to Vestry Clerk. Lord Ellenborough—"If the muniments belonged to him as annexed to his office, he may have an action of detainer or trover." Refused.—Anon., 2 Chitt. Rep. 255.

Parson.]—"Persona, in the legal signification: it is taken for the Rector of a Church parochial, and is called *persona ecclesiæ*, because he assumeth and taketh upon him the person of the Church, and is said to be seized in *jure ecclesiæ*, and the law had an excellent end herein, viz. that in his person the Church sues for and defends her right; and also be sued by any that had an elder and better title; and when the church is full, it is said to be plena, and consulta of such a one parson thereof; that is, full and provided of a parson that may *vicem seu personam ejus gerere*."—Coke on Littleton, fol. 300.

your own or predecessors' time, and maintain trespass against those who merely take them wrongfully; but you cannot sue or prosecute for breaking windows, or injuring the walls of the church, or cutting down trees in the churchyard, for the freehold is in the Parson. One of you alone cannot release an action once commenced. You can sue former Churchwardens for monies received by them.

In all cases where a prosecution is to be carried on by the Churchwardens, against any person for default or misconduct, whereby the parishioners are injured, you should have the authority of a Vestry expressly called for the purpose, and an order that it be done at the expense of the parish.

As to the Church Goods, you have a special property, a possession, in contradistinction to a mere charge.

But the pecuniary trust of Church Rate is the most important.

You will bear in mind that you are not obliged to lay out money taken from your own pocket, but that you are supposed in law to have raised, by RATE, money beforehand enough to meet the expenses of your office, and therefore can in no case be ordered or allowed to make a rate for the *reimbursement* of past charges or advances.

Reimbursement.—Where several parishioners joined at a vestry meeting in signing an order authorizing two Churchwardens to put a new roof on the parish tower, and both concurred in giving orders for that purpose, and one of them paid the artificers, and a rate for reimbursing them having been quashed; the Churchwarden that paid, sued the other Churchwarden for a moiety of the money paid. It was held that the defendant could not insist on those parishioners who had signed the Vestry order being joined with him as co-defendants in the action, as they merely signed as vestrymen. *Lanchester v. Tricker*, 8 Moore, 20.

With regard therefore to the making of a Church Rate, an order of the inhabitants in Vestry to make a Church Rate is in the nature of a *Bye Law*, made not by virtue of any Act of Parliament, but by custom.

The inhabitants of your Parish should be duly summoned to meet for the express purpose, in Vestry, under whichever of the before-mentioned forms it may be legally constituted.

If your Parish consist of several vills, and there be a custom to levy the rate in such vills, according to certain proportions, you must pursue such custom; and every *vill* or township contributing to a Church Rate should be summoned to the Parish meeting.

You will submit to the Vestry, when met, your estimate of repairs or other expenses necessary for the maintenance of the church, or performance of your duties, and move that the necessary amount be raised by means of an equal Rate, to be levied upon the parishioners in respect of their rateable property. It will then be for the Vestry to decide whether they will grant a rate or not, and if they do grant it, to what amount.

The majority of the Vestry are bound to grant or refuse the rate. The chairman is not bound and ought not to put from the chair a proposal for adjournment, or in any other form, for the purpose of evading the only two questions which the Vestry have authority to consider: First, whether they will grant a rate; secondly, if they will, of what amount? The chairman's duty is to refuse to put any other questions.

Bye Law.—An upland town, which is neither city nor borough, may allege a custom to have a way to their church, or to make bye laws for the reparation of their church, the well ordering of the commons, and such like things. Co. Lit. 110 b.

Vill.—R. v. Forston, Q. B., T. T. 1843.

You cannot, if the vestry should unanimously refuse a rate, make one out of vestry, though it is said by some authorities, that in the presence of the vestry, of which you would then be the *minority*, you and any others who agree with you, might do so, on the principle that the parishioners must discharge the legal obligation to repair. But this it would be bold in you to do.

The amount of money agreed to be granted by the Vestry is to be divided by an equal rate upon the inhabitants and occupiers, in respect of the lands, houses, and rateable property in the Parish.

Minority—The conclusion propounded by Archdeacon Hale, in the Preface (p. viii) to his 'Collection of Ancient Church Rate Precedents,' is—"When the necessity of repairing a Church or of providing the necessary ornaments for divine worship, according to the rites of the Church of England, has been proved by presentment either in the Consistory Court of the diocese, or before the Bishop or Archdeacon, or their officials or surrogates at their visitations *judicialiter sedentes*, the Ecclesiastical Judge in such case, whether Bishop, Archdeacon, official, or surrogate, has power to authorise and command the Churchwardens to call a Meeting of the Parishioners, and at that meeting to make a Rate, or cause it to be made, with or without the consent of a majority of the parishioners."

Archdeacon Hale considers, that where the rate is made by the minority in compliance with the monition of the Ordinary to the Churchwardens, it will need no subsequent confirmation by the Ecclesiastical Court.

But where it is made by the minority in fulfilment of the Common Law Duty, without such previous monition, it would stand in need of such confirmation, in order to give to the majority the power of satisfying the Ecclesiastical Judge on the validity of their objection, and their grounds of dissent from the minority.

Among the Precedents collected by Archdeacon Hale, it is somewhat singular that there is not one of that mode of proceeding which he considers to be legal having been adopted.

Every occupier is to be assessed, whether he be owner or tenant, in respect of his occupation, according to the annual value of the lands or houses he occupies. No lands or houses are exempt, except the Rectory and Glebe belonging to the Parish and being in the Parish. Except also lands and houses held by the Crown, and houses appropriated and duly certified for religious worship.

And no person is liable to be rated to Church Rates for any *Church*, district Church, Chapel Meeting-house, or premises, exclusively appropriated and duly certified for religious worship, or for any part thereof, because used for Sunday or Infant Schools, or for the charitable education of the poor.

Where *marsh lands* or wastes are improved or drained, the occupiers of the lands and houses, tithes and mines therein, are rateable to parochial rates of the parish nearest such lands; and in case of dispute, the boundaries of any parish in regard to such lands may be determined by the Justices of the Peace at Session.

County *Lunatic Asylums* can only be rated at the value of the site, as ground at the time of purchase.

Also, no person is rateable to any county, borough, parochial, or other rate, in respect of any land, houses, or buildings, belonging to any Society instituted for the purposes of science, literature, or the fine arts exclusively, either as tenant or as owner, and occupied by it for the transaction of its business, and for carrying into effect its purposes; the Society being supported totally or in part by annual voluntary

Church.]—Stat. 3 & 4 W. iv. c. 30.

Marsh Lands]—Stat. 17 G. ii. c. 37.

Lunatic Asylum.]—Stat. 9 G. iv. c. 40, s. 29.

Literary Society.—Stat. 6 & 7 Vic. c. 36.

contributions, and not making any division money, and its rules being certified by the Barrister certifying the rules of Friendly Societies.

Where there is a custom to rate persons in respect of their stock in trade, you should still do it.

If there be no valuation of the lands, the vestry should appoint a committee to make one; but in practice the Churchwardens usually adopt that valuation upon which the Poor Rates are made.

The form of the Rate may be thus:—

We, the Churchwardens and other Parishioners of the Parish of _____, in the county of _____ and diocese of _____, whose names are hereto subscribed, do hereby this _____ day of _____ in the year _____, at our Vestry Meeting for that purpose assembled, rate and tax all and every the Inhabitants and Parishioners of the Parish aforesaid, hereunder mentioned, for and towards the repairs of the Church of the said Parish [here set forth the other objects of the Rate], for the present year, the several sums following; namely:

NAMES.	TENEMENTS RATED.	RATEABLE ANN. VALUE.	RATE AT IN THE POUND.

A B } Churchwardens.
C D }

E F } Parishioners.
G H, etc. }

It may be prudent to adopt the form used for the Poor Rate.

There are three objections to a Church Rate, which are fatal to it, and which you must take care to avoid in making it: namely—1st. Inequality of the Assessment. 2d. Non-liability of the party objecting. 3d. Illegality of the Rate in form or purpose.

First, Inequality would be, rating the objector too high, or any other parishioner too low, or leaving out any one you should include in it; and though it is the practice in some places to leave out poor occupiers, it is more safe and proper to include them in the rate, and to have them excused afterwards.

The second objection may be, that the person assessed is not liable in that he does not occupy the lands rated, or that they are glebe or other lands which are excused, or that they are not in the parish; but this last question of parish boundary would have to be decided in a Court of Common Law.

The third objection, that the rate is illegal, may arise because it is not made in each particular according to law, as that the proper forms have not been observed; that proper notices for the Vestry were not given, or any of the forms, either customary or by Act of Parliament, omitted; or that in some way or other the Vestry was not properly constituted; or because the object for which it was made was not simply the repairs of the church and other matters to which it ought to be confined; or because it was retrospective, that is, for the past, and not for the current year; or because it is not necessary, from your having other money unexpended, or uncollected, and still due, which you ought to have collected under some previous Church Rate, as then it would not be necessary to make a new rate.

Inspection.]—Tithe-owners may inspect the rate, and landowners and tithe-owners may require information as to persons and property rated.

Levy.—You should make an early demand on those who are rated, to pay the sum at which they are assessed, as on the death of a party rated his rate is lost. Should the persons rated refuse to pay, you must immediately proceed to compel them. Formerly your only way was to sue them in the Ecclesiastical Court for subtraction of Church Rate, and that is still the only remedy where the rate itself is disputed.

But from the inconvenience and expense of always appealing to the Ecclesiastical Court in all cases, where the liability of the person assessed as occupier, etc., and the legality of the rate itself are not disputed, the jurisdiction is, by *statute*, taken from the Ecclesiastical Court, if the amount of the payment for rates do not exceed 10*l*.

If you cannot collect a rate not exceeding 10*l*., one of you should complain to any Justice of the district, and obtain his warrant for the attendance of the person refusing payment before two Justices, who may examine into the case on oath, and make an order for the payment of what money they consider due, and reasonable costs. If he disobey the order, then one of such Justices may grant a warrant of distress, which may be levied not only in the parish but in any part of the same county, and in any other county on the warrant being backed, after inquiry on oath by any Justice of the county in which the person (against whom the warrant has been granted) have goods.

The *sale* must take place not later than four days, nor earlier than two.

Statute.—53 G. iii. c. 127. *Richards v. Dykes*, 3 Ad. & E. N. S. 256.

Sale.—27 G. ii. c. 20, s. 3.

If your parish be regulated by any particular Act in this matter, the particular Act must direct you.

You, or the person against whom you have proceeded, may appeal to the next practicable Quarter Sessions, if you or he feel aggrieved by the decision of the Justices, on giving the opposite party sufficient notice.

With respect to *Quakers*, you must complain to a Justice, who will summon the Quaker before two or more Justices, who may examine upon oath into the complaint, and make an order for the payment of such sum, not exceeding 50*l.*, as shall be due, together with reasonable costs, not exceeding 10*s.*; and on his refusal you may obtain from one of the Justices who heard the complaint a warrant of distress, under which the Quaker's goods may be immediately sold. It would appear that it is immaterial whether the Quaker contends that the rate is invalid or himself not liable, the Justices have full jurisdiction to determine, subject however to a power of appeal to the next Quarter Sessions, should either you or the Quaker feel aggrieved.

Borrowing Money.—For repairing, enlarging, or rebuilding churches, and providing and enlarging burial yards, money may be borrowed on the rates; but the loan must not be for past repairs, etc.

The proceedings should be taken under the direction of the Church-building Commissioners, and the Churchwardens will also first obtain the consent of the Bishop, they will then submit to the Vestry, duly summoned, a proposal to borrow money on the security

Quaker.—Stat. 7 & 8 W. iii. c. 34; 1 G. i. stat. 2, c. 6, s. 2; 53 G. iii. c. 27; 5 & 6 W. iv. c. 74, s. 2.

Borrowing Money.—Stat. 58 G. iii. c. 45. *R. v. Dursley*, 5 Ad. & E. 10.

of the rates. If the vestry should agree to the proposal, then they may bind the Parish subsequently to pay by rates imposed by the Churchwardens, the money so borrowed, together with interest thereon.

The Church-building *Commissioners* are also authorised to lend money upon the security of the rates. The money may also be raised on annuity, to be payable out of the Church Rate.

By several Acts of Parliament various Penalties are to be paid to you in aid of the Church Rate, such as the penalties for drunkenness; for hawking spirituous liquors; for servants carelessly firing houses in London; for the Incumbent not reading the Common Prayer once a month.

With regard to EXPENDITURE, having from the rate, or other sources of income, money in hand, you are bound to satisfy out of it all lawful expenses accruing during your year of office.

There are three classes of expenses:

- I. Necessary or ordinary expenses, which it is within the power of the Churchwardens to defray out of the rate granted, without the particular authority of the Vestry or Ordinary for each item; such as the necessary repairs of the church, without adding anything new; the sacramental bread and wine, and other articles required for the decent performance of Divine Service; repayment of money duly raised under the Church Building Acts.
- II. Extraordinary expenses sanctioned by the Vestry or

Commissioners.—Stat. 3 G. iv. c. 72, extended by stat. 5 G. iv. c. 103. See Appendix.

Money raised under Church Building Acts.—R. v. St. Mary, Lambeth, 3 B. & Ad. 651; R. v. St. Margaret's, Leicester, 8 Ad. & E. 889.

the Ordinary: that is, expenses which are not within the power of the Churchwardens alone to defray, but which are legal when authorised by the Vestry or Ordinary; such as the salary of the organist, pew openers, or beadle, the lighting the church when the service is in the dark, and the like.

III. Illegal expenses, for matters not within the object of the Church Rate, as provision for the Incumbent, buying additional burying ground without the authority of the special Act of Parliament.

You will take receipts (stamped, if necessary) for what you pay, and preserve them for passing your accounts.

In collecting and disbursing money in your office, you must keep an accurate ACCOUNT, not only of the sums received, but also of those expended, and when your year of office has expired, render a final account thereof to the Minister and Parishioners.

Within a month after the appointment of the new Churchwardens you should submit your accounts at a Vestry. Should you refuse to do this, the Spiritual Court on the presentment of the new Churchwardens will compel you. If such accounts are approved, they must be entered in the book kept for them, and those of the vestry who agree should sign their names to it.

What money you have in hand you should pay over to the new Churchwardens; but if you have laid out more than you have received, and have done so on account of debts incurred with the sanction of the parish in vestry assembled, you are entitled to receive that *balance* from your successors, who may charge it in their accounts of the next year.

Balance.—1 Rolls Abr. 121; Can. 89, 109. And the Court of Chancery will, it is said, on application, make an

If your accounts are unfair, you are liable to be punished for any fraud.

You must produce all the Church articles, and give them as you received them, to your successors.

The new Churchwardens can *sue* you at law for the recovery of the balance of monies due on your account. They can also sue you for making away with the utensils of the Church.

On your accounts being passed, the surplus money and the utensils handed over, your Duties are discharged, and *no oath* on quitting office can be required of you.

You should *deliver* all Parish *Books* and Papers in your possession, to such persons as the Vestry may direct.

The Penalties, and which the law has provided in the way of **Sanction** for the due discharge of the office, are briefly these—

Churchwardens may be *compelled*, by ecclesiastical censures, to perform the repairs for the necessary sustentation of the Church, if they have the means of defraying it, and wilfully neglect their duty.

If Churchwardens misbehave themselves, the parishioners may *remove* them.

order for the purpose. 2 Eq. Abr. 203. But this is now doubtful; even if Churchwardens are re-elected they cannot make a rate in their second year to liquidate charges incurred in the preceding year. *Ellis v. Griffin*, 2 Curt. 673.

Sue.]—*Turner v. Baynes*, 2 H. Blac. 559.

No Oath.]—Stat. 5 & 6 W. iv. c. 62, s. 9.

Deliver Books.]—Stat. 58 G. iii. c. 69.

Compelled.]—*Millar v. Palmer*, 1 Curteis, 553.

Remove.]—"The power of the parishioners to remove their churchwardens, in case of their wasting the goods of the parish (or it may be presumed in case of their other misbehaviour), is pretty broadly laid down in many books of authority." *Sir J. Nichols. Dawe v. Williams*, 2 Add. R. 133.

An *indictment* lies against Churchwardens for extortion and corruption in their office.

Any of the parishioners may be *witnesses* against them in Courts of Law.

Should they omit to levy a rate for the purpose of paying off the principal and interest of any *debt* duly charged on the Church Rates, under act of Parliament, the Court of Queen's Bench will compel them by mandamus to make and levy the rate.

They are liable to account, as before mentioned.

Finally, as to the indemnity and protection, in the honest execution of the office, which in the way of **Privilege** affords you.

You are not answerable for indiscretion, but only for deceit, if you lay out more money than is needful.

You cannot be called to account until the expiration or determination of your office.

If the account have been *allowed* by the Minister and major part of the parishioners present at the meeting, you cannot be called to account again, unless some fraud be discovered in your account.

The Ecclesiastical Courts may compel the *production* of the accounts, but cannot dispute their validity when produced.

If an *action* is brought against any Churchwarden, or persons called sworn-men, executing the office of

Indictment.]—*R. v. Eyres*, 1 Siderfin, 307.

Witnesses.]—3 & 4 W. & M. c. 11.

Debt.]—*R. v. St. Michael's Pembroke*, 5 Ad. & E. 603.

Allowed.]—1 Wood Inst. b. 1, c. 7; *Snowden v. Heming*, Bunb. 289.

Production.]—*Wainwright v. Bagshaw*, 2 Str. 974; *Leman v. Goulty*, 3 T. R. 3.

Action.]—7 Jac. c. 5; 21 Jac. c. 12; 5 & 6 Vic. c. 97.

Churchwarden, for anything done by virtue of their office, they may plead the general issue, and give the special matter in evidence. And if a verdict is given for them, or the plaintiff shall be nonsuited or discontinued, they shall have a full and reasonable indemnity for all costs, charges, and expenses incurred in and about such an action, taxed by the proper officer.

APPENDIX.

A CONCISE STATEMENT OF THE PROVISIONS OF THE
CHURCH-BUILDING AND OTHER MODERN ACTS, AND
THE DUTIES OF CHURCHWARDENS UNDER THEM.

1. PROVISIONS AS TO DISTRICT PARISHES, ETC.
2. PROVISIONS AS TO SUBSCRIPTION CHURCHES, AND
PRIVATE ENDOWED CHURCHES.
3. PROVISIONS AS TO ADDITIONAL BURIAL GROUND.
4. PROVISIONS AS TO CHURCHES OF THE ECCLESIASTICAL
COMMISSIONERS' ENDOWMENT, AND THE DUTIES
OF CHURCHWARDENS THEREOF.

1. PROVISIONS AS TO DISTRICT PARISHES AND CHAPELRIES UNDER THE CHURCH BUILDING ACTS.

The series of Acts which are usually called 'The Church Building Acts,' consists of 58 G. iii. c. 45; 59 G. iii. c. 134; 3 G. iv. c. 72; 5 G. iv. c. 103; 7 & 8 G. iv. c. 72; 1 & 2 W. iv. c. 38; 2 & 3 W. iv. c. 61; 7 W. iv. and 1 Vict. c. 75; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60.

Under these Acts Commissioners are appointed, and are continued until 20 July 1848, and a fund of one million and a half was placed at their disposal for the building of additional churches and enlarging old or existing churches.

The Commissioners have compulsory power as to requiring sites where they resolve on erecting a new church, to be found by the parish, and a large discretion as to granting aids for building and enlarging a church in any parish where the population is above 4000, and there is accommodation in the church or churches for only one-fourth of such population, or where 1000 persons are resident four miles from the parish church. They may also, with the consent of the vestry, if one-third in value of the proprietors do not dissent, make partial grants in aid of the rates, or loans of money on the security of the rates, at interest, for building new or enlarging old churches. Facilities are given for obtaining sites for such churches, and in their favour the brick excise and stamp duties are remitted.

The Commissioners are invested with extensive powers as to the creation of new and distinct parishes out of old ones, and the division of old parishes into district parishes, for ecclesiastical purposes, or district chapelries, for ministerial and pastoral duties. They are also empowered to legalize the letting of pews for the payment of the minister and officers of the church.

With regard to the parishes, or divisions of a parish, or chapelry, under these Acts, they are—

- Separate and distinct Parishes,
- District Parishes,
- District Chapelries.

SEPARATE AND DISTINCT PARISH.

With the consent of the Bishop and Patron, the Commissioners may make representation to the Crown in council, who by order in council may divide any such populous parish, or make any extra-parochial place, into a separate and distinct parish for ecclesiastical purposes, and may divide the glebe, tithe, and ecclesiastical profits.

And after the existing incumbency, each of the parishes becomes like the original, a rectory, etc.; but until that time the new church is a chapel.

Patronage.—The presentation belongs to the original patron after the existing parish incumbent's death. In some cases the Commissioners may vest it in the bishop.

Repairs.—The repairs of the churches are made by district rates, but other parochial rates are not affected.

The Commissioners may consolidate parts of contiguous parishes and extra-parochial places, and make them distinct parishes.

DISTRICT PARISH.

By the like representation and order a populous parish may be divided, with the consent of the Bishop into ecclesiastical districts, or a district assigned to any existing chapel of ease or parochial chapelry, and an apportionment of, or charge on the glebe, tithes, and ecclesiastical profits made.

Patronage.—The presentation to belong to the original patron, unless it be a chapel built wholly or in part by rate, and then to the parish incumbent. The curate to be under his superintendence in every case.

Services.—All the services and rites of the Church to be performed, except marriage, and even that by direction of the Bishop.

Repairs.—To be repaired by rates on the district. In some cases the district church may be substituted for the parish church.

DISTRICT CHAPELRY.

The Commissioners may assign a district for the minister's cure.

Patronage.—The nomination of curate belongs to the incumbent of the parish, but the salary is to be fixed by the Commissioners.

The Commissioners, with the Bishop's consent, may form new district chapelries for pastoral visitation, etc.

Repairs.—The chapel to be repaired by the parish in general.

OFFICERS AND OTHER GENERAL MATTERS.

The common provisions relating to such churches and chapels, are to this effect.

Vestry.—In every parish or division of a parish or chapelry, under the Acts, the Commissioners and Bishop may appoint a select vestry for the district, who are to renew their own body. They are to appoint the chapelwarden, on behalf of the parish or district; but they cannot make rates for the repairs of the church, and a majority of the whole number must be present at the meeting. See *Blacket v. Blazard*, 9 B. & C. 851.

Clerk.—The minister is to appoint the clerk yearly.

Churchwardens.—By 58 G. iii. c. 45, s. 73, it is enacted, that two fit and proper persons shall be appointed to act as churchwardens for every church or chapel built or appropriated under the provisions of this Act, at the usual period of appointing parish officers in every year, and shall be chosen, one by the incumbent of the church or chapel for the time being, and the other by the inhabitant householders entitled to vote in the election of churchwardens residing in the district to which the church or chapel shall belong, and of any extra-parochial place by such inhabitant householders as would be entitled to vote in the election of churchwardens, if such extra-parochial place had been a parish; and the two persons, when so elected churchwardens, shall appear and be admitted, and sworn according to law, and shall collect and receive the rents of the seats and pews, and pay the stipends or salaries appointed by the Commissioners to be paid to the minister and

clerk of and belonging to the church or chapel for the time being, and also shall do, perform and execute all lawful acts, matters, and things, necessary and requisite for and concerning the repairs, management, good order and decency of behaviour, to be kept and observed in the church or chapel, by the congregation thereof; and the persons so to be appointed or chosen churchwardens, shall continue in their said office, until others shall be chosen in like manner in their stead; and all the persons so chosen churchwardens are hereby authorized and empowered, in case of non-payment of the rents of the seats and pews of the church or chapel for which they shall be appointed, to enter upon and sell the same, or else to sue for and recover the same by action or actions, for such rents, in the names 'of the churchwardens of the church or chapel of (describing the same),' as the case shall, or may require, without specifying the christian or surnames of such churchwardens; and no such action shall abate by reason of the death or removal, or going out of office, of any such churchwarden.

Sec. 74.]—The churchwardens of every parish in which any additional chapel shall be built or provided under any of the provisions of this Act, without making any division thereof into separate parishes or district parishes, shall and are hereby authorized and required to execute and do all such things as the churchwardens to be appointed under the provisions of this Act are authorized and required to do.

Pews.]—The rents are to be fixed in Commissioners schedule, but are alterable by the churchwardens, incumbent, patron, and bishop. There is to be a pew for the minister, and another for his servants; and one-fifth are to be free sittings for the poor in churches, built wholly or in part by rates.

The pews are to be let or sold to parishioners only; but after six weeks' notice, all not taken within 14 days after may be let for one year to non-parishioners.

The Commissioners may discharge subscribers from pew-rents wholly or partially.

Pew-rents.]—Application of the rents: the minister's stipend and clerk's salary are to be paid. The surplus to be applied in aid of money borrowed, or defraying the expenses and repairs of the church.

Burials.—Not within twenty feet of external walls of any such new church.

The bishop, with consent of vestry, may fix a table of fees.

2. PROVISIONS AS TO SUBSCRIPTION CHURCHES, AND PRIVATE ENDOWED CHURCHES.

Facilities are also given by these Acts for the erection of (I.) subscription churches and (II.) private endowed churches.

I. When twelve householders certify that there is church accommodation for only one-fourth of the inhabitants of a parish, and there are persons willing to subscribe for building a church, with one-fifth free seats, and providing a stipend for the minister and clerk, and the service expenses, out of the pew rents, the bishop may consent thereto.

The commissioners may, with the consent of the bishop, patron, and incumbent, assign a district, and make it a district church.

The subscribers may elect three life-trustees for management of the church.

The nomination of spiritual persons to serve it, to be in the trustees for two turns or forty years, unless it were built partly by rate, and then the first and subsequent nominations to be in the incumbent of the parish, unless it be made a district church, and then in the patron.

Pews are to be let as in other cases of new churches.

Life-trustees and churchwardens may dispose of vaults for increasing the minister's stipend fund.

Where private persons are willing to subscribe one-half, and the parishioners to raise the remainder by rates, the bishop may, after reference to patron and incumbent, give consent; and in such case, the first minister to be appointed by the trustees; the second by the incumbent of the parish.

II. By statute 7 & 8 G. iv. now repealed, persons satisfactorily endowing church or chapel might have the nomination of ministers without compensation to the parish incumbent.

But by 1 & 2 W. iv. c. 38 this was repealed, and the following substituted:—

In parishes where the population amounts to 2000 and the

churches do not afford accommodation for more than one-third of the inhabitants, or where 300 persons reside more than two miles from the church, if any person shall declare his intention of building a church or chapel, according to certain conditions, the Bishop may declare the right of nominating to be in such person or his trustees, as a perpetual curacy. But the new church for such 300 persons must not be within two miles of the old; and notice must first be given to the patron, who has first the option of erecting and endowing a church himself.

The Commissioners or Bishop may assign a district to the new church.

The pews may be let, but the proceeds must go to the endowment. One-third of the sittings must be free, or let at low rents.

Churchwardens are to be appointed by the incumbent and pew-renters.

3. PROVISIONS AS TO ADDITIONAL BURIAL GROUND.

The Act of 58 G. iii. c. 45, s. 33, empowers the Church-building Commissioners to accept and purchase land for the site of churches and churchyards from any bodies politic or corporate, or persons, to be devoted to the purpose of building new churches; and also empowers the Commissioners to lend, and parishes to raise, money for that purpose. The Act of 59 G. iii. c. 134, makes applicable all the powers and provisions of 58 G. iii. relating to the grant, etc. of lands, and raising money for building churches, to the grant, etc. of lands, and raising money for enlarging of any churchyard or burial ground *mutatis mutandis*; and more particularly the 36 section empowers the Commissioners, if they think that the churchyard of a parish ought to be enlarged, to give Notice to the Churchwardens thereof, and of the extent of ground which will be required for that purpose, and of the part of the parish within which it is to be situate; whereupon the Churchwardens are required within fourteen days to call a meeting of the vestry of the parish for the purpose of taking the measures necessary for providing such additional churchyard. By section 39 the Commissioners may order the walls of any churchyard to be pulled down and rebuilt, and any new burial ground to be

fenced off with walls or otherwise; and may order the entrance or gate into any churchyard or burial ground, and the paths, footways, and passages into, through, and over the same, appearing to them to be unnecessary, to be stopped up and discontinued, provided the same be done with the consent of two Justices of the Peace, pursuant to the Act 55 G. iii. c. 68.

That statute has been repealed as to general purposes, but still subsists for this purpose. It gives a form of Notice of an order for stopping up an useless road. This form states that the order will be enrolled at Sessions, unless, upon an appeal against the same to be then made, it be otherwise determined. But this reference does not give an appeal against the order of the Commissioners, as an appeal cannot be given by implication. *Regina v. Stock*, 8 Ad. & E. 405.

By 7 & 8 G. iv. c. 66, the Crown may grant lands for cemeteries.

4. PROVISIONS AS TO CHURCHES OF THE ECCLESIASTICAL COMMISSIONERS ERECTION, AND THE DUTIES OF THEIR CHURCHWARDENS.

[Stat. 6 & 7 Vict. c. 37.]

By this Act the Governors of Queen Anne's Bounty are empowered to lend to the Ecclesiastical Commissioners 600,000*l.* stock, and any further sums hereafter, upon the security of the property of the Commissioners under the Cathedral Acts.

District.]—The Ecclesiastical Commissioners, by authority of an order of the Queen in council, and with the consent of the Bishop of the diocese, may make any part of any large and populous Parish, whereof the provision for pastoral superintendence is insufficient, into a separate district for spiritual purposes. Upon the consecration of the permanent church, the district becomes a new parish for ecclesiastical purposes under the name of the "new parish of . . ."

Church.]—There may be a temporary church wherein all divine offices and rites may be performed, except marriages and burials. The Church Building Commissioners may contribute to the building of a church; and upon the church being approved by the Ecclesiastical Commissioners, and consecrated, marriages and burials, as well as the baptisms and churchings, can be solemnized; but no fee is to be payable for baptism, or

its registration. In other respects parochial rights of the original parish are not affected. The Act has made no provision for a churchyard or burial-ground, nor for the repairs of the church.

Patronage.—The Commissioners may award compensation to the incumbent of the mother church. The patronage may be conferred for a nomination, or for ever, upon any body or person contributing to the endowment as approved by the Commissioners; but subject to this, the patronage is to be exercised alternately by the Crown and the Bishops. The minister is the perpetual curate.

Endowment.—At first it must be at least 100*l.* per annum, and ultimately 150*l.* per annum, to be made up by the Ecclesiastical Commissioners. By the re-enactment and revival of ancient and repealed Acts, an unlimited power of donation by deed or will in mortmain, in endowment of the cure, is given.

Churchwardens.—By s. 17, in every such case of a district so becoming a new parish, two fit and proper persons, being members of the United Church of England and Ireland, shall, within twenty-one days of the consecration of the church thereof, be chosen churchwardens for such new parish, one being chosen by the perpetual curate thereof, and the other by the inhabitants residing therein, and having a similar qualification to that which would entitle inhabitants to vote at the election of churchwardens for the principal parish as aforesaid, or the majority of such inhabitants; and such election shall take place at a meeting to be summoned in such manner in all respects as such perpetual curate shall direct. Such persons shall continue such churchwardens until the next usual period of appointing parish officers following their appointment; and at the like time in every year two such persons shall thenceforward be chosen by the perpetual curate for the time being, and inhabitants assembled as aforesaid; and every person so chosen as aforesaid shall be duly admitted, and shall do all things pertaining to the office of churchwarden, as to ecclesiastical matters, in the said new parish: Provided always, that nothing therein contained shall render any such churchwardens liable or competent to perform the duties of overseer of the poor in respect of such their office of churchwardens.

